



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

December 30, 2013

CERTIFIED MAIL No. 7013 1710 001 2366 7685

U.S. Army Corps of Engineers
Attn: Chris Harper
8010 NW St. Helens Road
Portland, OR 97210

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-13-134

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,305 for failing to conduct monthly visual monitoring of your stormwater discharges and failing to collect monitoring data for the 2012-2013 monitoring period as required under your National Pollutant Discharge Elimination System Stormwater Discharge General Permit Number 1200-Z (Permit). Specifically, you failed to collect data for the impairment pollutant of iron during the first monitoring period of the 2012-2013 monitoring year and only conducted one of the two required sets of samples for the benchmark pollutants of pH, total copper, total lead, total zinc, oil and grease, and total suspended solids at two sampling points before December 31, 2012, at your facility in Portland, Oregon. Failure to conduct monthly visual monitoring and to collect monitoring data as required by the Permit is a violation of Oregon Revised Statutes 468B.025(2).

DEQ issued this penalty because the regulatory system that protects Oregon's water quality relies almost exclusively on complete and accurate monitoring and reporting of data and visual observations by pollution sources. Accurate information is the basis for all efforts, both public and private, to restore and protect Oregon's waters. Permittees are required to sample and monitor their stormwater discharge to ensure their discharges meet the water quality benchmarks in the Permit. Failure to meet the benchmarks may indicate the presence of harmful levels of industrial pollutants that could enter waters of the state. These discharges can damage aquatic species and their habitat and reduce the safety of public waters for public use. Monitoring impairment pollutants in stormwater discharge is essential to determine whether your facility is contributing to water quality concerns in the Willamette River. Without monitoring data, the Department cannot analyze potential harmful environmental consequences.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a written hearing request from you within 20 days, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.



The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Steve Siegel, at (503) 229-5395. You may call toll-free within Oregon at 1-800-452-4011, extension 5395.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Laura Johnson, Inspector, City of Portland Environmental Services
Multnomah County District Attorney
John Koestler, Water Quality, DEQ headquarters

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
UNITED STATES ARMY CORPS)	ASSESSMENT AND ORDER
OF ENGINEERS,)	
)	NO. WQ/SW-NWR-13-134
Respondent.)	

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 045.

II. FINDINGS OF FACT

1. On September 4, 2012, the Department of Environmental Quality (DEQ) assigned Respondent coverage under National Pollution Discharge Elimination System (NPDES) Stormwater Discharge Permit Number 1200-Z (Permit) through a letter from the City of Portland. The permit expires on June 30, 2017, and was in effect at all material times. Respondent has had coverage under previous versions of the Permit since April 27, 1998.

2. The Permit authorizes Respondent to discharge stormwater from Respondent's ship and boat building or repairing facility located at 8010 NW Saint Helens Road, Portland, Multnomah County, Oregon (the Facility), only in conformance with the requirements, limitations, and conditions set forth in the Permit.

3. Schedule B, conditions 1 and 2 of the Permit require Respondent to conduct monitoring of its stormwater for impairment pollutants at least two times per year, with one sample taken on or before December 31, and one sample taken on or after January 1.

4. Schedule B, conditions 1 and 2 of the Permit require Respondent to conduct monitoring of its stormwater for benchmark pollutants at least four times per year, with two samples taken on or before December 31, and two samples taken on or after January 1.

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1 5. On September 4, 2012, the City of Portland Bureau of Environmental Services
2 (BES) issued Respondent a permit assignment letter stating Respondent is required to monitor its
3 stormwater discharge for the impairment pollutant of iron and the benchmark pollutants of pH,
4 total copper, total lead, total zinc, oil and grease, and total suspended solids.

5 6. Respondent submitted a Discharge Monitoring Report (DMR) to BES for the
6 2012-2013 monitoring year that was received by BES on or about July 30, 2013.

7 7. According to the DMR, Respondent did not sample for the impairment pollutant
8 of iron at either of two sampling points during the 2012-2013 monitoring year on or before
9 December 31, 2012.

10 8. According to the DMR, Respondent sampled for the benchmark pollutants of pH,
11 total copper, total lead, total zinc, oil and grease, and total suspended solids on only one occasion
12 between July 1, 2012, and December 31, 2012.

13 9. Schedule B, condition 7.a.i.7 of the Permit requires Respondent to conduct visual
14 monitoring of its stormwater once per month when stormwater discharge is occurring.

15 10. Schedule B, condition 7.b.v of the Permit requires Respondent to document its
16 stormwater discharge observations in an inspection report that is retained on-site and is available
17 to DEQ or its agent upon request.

18 11. On October 3, 2013, Respondent did not provide inspection reports documenting
19 stormwater discharge observations for January, February, March and September 2013 to the BES
20 inspector requesting reports during a Facility inspection.

21 12. The City of Portland Water Pollution Control Laboratory rain gage located at
22 6543 N. Burlington Avenue documents that rainfall occurred in the vicinity of the Facility during
23 January, February, March and September 2013 during standard business hours.

24 13. The rain gage data documents that there was no rain in the vicinity of the Facility
25 on March 28, 2013, the date Respondent reports its visual observations for March 2013.

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III. CONCLUSIONS

1. Respondent has violated Schedule B.1 and B.2 of the Permit, OAR 340-0015(5)(b), and ORS 468B.025(2) by failing to conduct required monitoring for the impairment pollutant of iron at two sampling points before December 31, 2012, and by failing to conduct required monitoring for the benchmark pollutants of pH, total copper, total lead, total zinc, oil and grease, and total suspended solids on the two required occasions between July 1, 2012, and December 31, 2012, as set forth in Section II above. According to OAR 340-012-0055(1)(o), these are Class I violations. The Department hereby assesses a \$5,200 civil penalty for these violations.

2. Respondent has violated Schedule B.7.a.i.7 and B.7.b.v of the Permit, OAR 340-045-0015(5)(b), and ORS 468.025(2) by failing to visually monitor stormwater when discharging in January, February, March and September, 2013. According to OAR 340-012-0055(1)(o), these are Class II violations. The Department hereby assesses a \$3,105 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO:

Pay a total civil penalty of \$8,305. The determinations of the civil penalties are attached as Exhibit Nos. 1 and 2 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any

1 allegations of fact in this Notice or attached exhibit, you must include them in your request for
2 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense
3 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests
4 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
5 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**
6 **5100**. An administrative law judge employed by the Office of Administrative Hearings will
7 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
8 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
9 may represent yourself unless you are a corporation, agency or association.

10 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
11 Notice, the Notice will become a final order by default without further action by DEQ, as per
12 OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to
13 attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a
14 final order by default pursuant to OAR 137-003-0670. DEQ designates the relevant portions of
15 its files, including information submitted by you, as the record for purposes of proving a prima
16 facie case.

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19 Date

12/30/13

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Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Failing to conduct required monitoring for impairment and benchmark pollutants in violation of Schedule B.1 and B.2 of NPDES Permit No. 1200-Z, OAR 340-045-0015(5)(b), and ORS 468B.025(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(o).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to the Department does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$3,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), because Respondent has coverage under a NPDES general permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one class one violation in case no. WQ/SW-NWR-10-016.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because there is insufficient information on which to base a finding under paragraphs (3)(a)(A) or (B).

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(a)(B), because the violation occurred at two locations on the same day. Respondent failed to perform sampling and analysis for an impairment pollutant and benchmark pollutants at two sampling locations on or before December 31 during the 2012-2013 monitoring period.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(a)(B), because Respondent had at least constructive knowledge (reasonably should have known) that failing to monitor for impairment and benchmark pollutants is a violation. The permit expressly requires monitoring and Respondent was specifically notified in the

September 2012 permit assignment letter of the benchmark and impairment monitoring parameters and the required monitoring schedule.

"C" is Respondent's efforts to correct the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$400. This is the amount Respondent gained by avoiding spending \$403 on required monitoring. This EB was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (2 + 0 + 2 + 2 + 0)] + \$400 \\ &= \$3,000 + (\$300 \times 6) + \$400 \\ &= \$3,000 + \$1,800 + \$400 \\ &= \$5,200\end{aligned}$$

EXHIBIT NO. 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Failing to conduct monthly visual monitoring, in violation of Schedule B.7 of NPDES Permit No. 1200-Z, OAR 340-045-0015(5)(b), and ORS 468B.025(2).

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to the Department does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,500 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), because Respondent has coverage under a NPDES general permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one class one violation in case no. WQ/SW-NWR-10-016.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because there is insufficient information on which to base a finding under paragraphs (3)(a)(A) or (B).

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(a)(B), because there were four occurrences of the violation, one in each month (January, February, March, and September, 2013).

"M" is the mental state of the Respondent and receives a value of 6 according to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. Respondent holds a permit that requires monthly visual monitoring and inspection reports, Respondent missed this requirement at both of its outfalls on four occasions during the monitoring year, City of Portland staff conduct annual site visits which include a discussion of visual monitoring requirements with Respondent, and Respondent was issued a notice of civil penalty for failing to conduct visual monitoring in 2010.

"C" is Respondent's efforts to correct the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$105. This is the amount Respondent gained by avoiding spending \$105 on required monitoring. This EB was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$1,500 + [(0.1 \times \$1,500) \times (2 + 0 + 2 + 6 + 0)] + \$105 \\ &= \$1,500 + (\$150 \times 10) + \$105 \\ &= \$1,500 + \$1,500 + \$105 \\ &= \$3,105\end{aligned}$$